



## **I. Qualifications and Summary**

I am an economist and a Special Consultant at National Economic Research Associates, Inc. I have conducted research on entertainment and media industries for over 30 years. I have analyzed marketplace prices paid for copyright licenses, reasonable rates for such licenses, and the distribution of fees collected to individual rights owners in a variety of media, including cable networks, broadcast stations, television programs, motion pictures, books, music compositions and recorded songs. I have submitted reports to and/or testified before the Copyright Royalty Judges and Copyright Arbitration Royalty Panel (CARP) concerning the distribution of cable royalty funds, the distribution of satellite royalty funds, the compulsory license fee for satellite-retransmitted broadcast stations, and the costs and revenues of the record labels affiliated with the major U.S. record companies. In addition, I have submitted reports to the Federal Communications Commission and the Federal Trade Commission, and have testified before state and Federal courts and arbitrators concerning entertainment market issues. A detailed statement of my qualifications is attached as Appendix 1.

Counsel for the Public Broadcasting Service asked me to address two issues relevant to the relative value of distant Public Television (PTV) stations imported by cable operators in 2004-05: whether there has been a major change in the factors that would affect relative marketplace values between 1998-99 and 2004-05 and what the outcome of the Bortz survey would likely have been had the survey not omitted systems that imported only distant PTV and/or Canadian stations.

In summary, I conclude:

- There was no major change in the factors that would affect relative marketplace value in 2004-05. Available data indicate that there was no decrease in demand for imported PTV programming. If anything, there was a slight increase in such demand.
- Had all systems with distant signals been considered eligible, the Bortz survey would have been expected to find that cable operators attributed to PTV about 6 percent of the fixed dollar amounts they spent on the distant signals they actually imported to attract and retain subscribers in 2004-05.

## **II. No Substantial Changed Circumstances Between 1998-99 and 2004-05**

### **A. Background**

In 1998-99, the CARP awarded PTV 5.5 percent of the cable operator basic royalty fund. It reached its decision based on a prior percentage allocation to PTV and a finding of no changed circumstances since that time that affected PTV's share.<sup>1</sup>

According to previous CARP proceedings and related court decisions, the standard for determining the distribution of the royalties for cable-retransmitted distant signals among the claimant groups that supply the compensable programming is relative marketplace value. The hypothetical marketplace negotiations over such programming would occur between cable operators and broadcasters (as intermediaries for copyright owners) for the rights to retransmit entire broadcast signals.<sup>2</sup> Only demand is relevant in such negotiations—the demand by the cable operators for the distant signals they choose to import. Demand for distant signals depends on the prices and quality of the available substitutes—the local stations, cable networks and other services offered by cable operators—the additional cost (if any) of bringing the distant station to the cable system headend, and the income and taste of the cable system subscribers and potential subscribers.

### **B. Carriage**

Cable operators have a choice whether or not to carry distant signals. All systems must pay a minimum fee covering one distant signal equivalent (DSE). That is, a cable system could carry one independent station (equal to one DSE), four PTV stations or four major network affiliates (each PTV and affiliate station equals one-quarter DSE) without paying additional royalties.<sup>3</sup> Although one DSE is “free” with the minimum payment in terms of cable royalties, the distant signal(s) use bandwidth that the operator may prefer to use for cable networks or other services. As a result, many systems import no distant signals, and still others carry only a

<sup>1</sup> Program Suppliers v. Librarian of Congress, 409 F.3d 395 at 399-400, 403-404 (D.C. Cir. 2005).

<sup>2</sup> CARP Report, Cable Royalties for the Years 1990-92, Docket No. 94-3 CARP CD-90-92, May 31, 1996, pp. 22-24; Report of the CARP to the Librarian of Congress, In the Matter of the Distribution of 1998 and 1999 Cable Royalty Funds, Docket No. 2001-8 CARP CD 98-99, October 21, 2003, pp. 9-11.

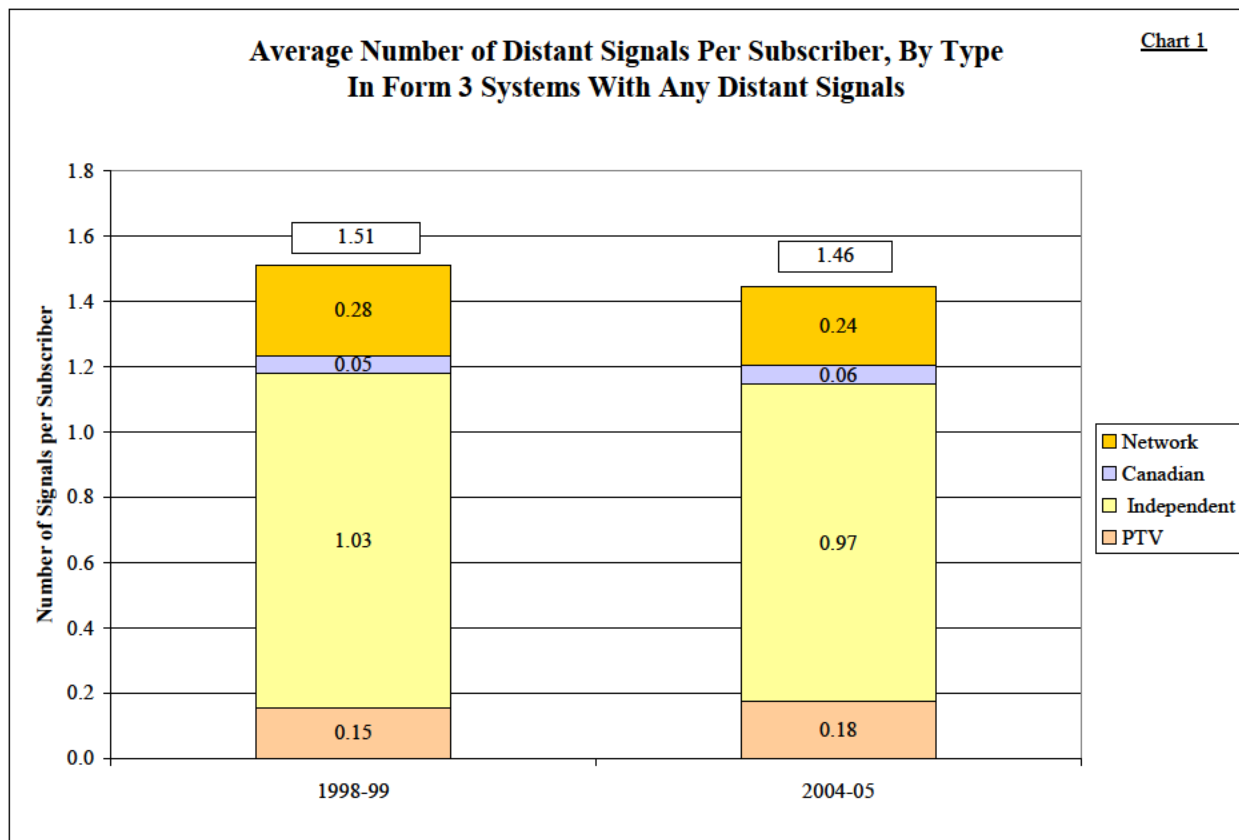
<sup>3</sup> 17 U.S.C.A. Sect. 111(f) (2008).

fractional DSE. In 1998-99 and 2004-05, Form 3 systems covering about 30 percent of subscribers imported less than one DSE and paid the minimum fee—about 20 percent carried no distant signals and about 10 percent carried only a fractional DSE.<sup>4</sup> For these systems, the value of a distant signal (or an additional fractional DSE) is apparently less than the value of an alternate use of the bandwidth the signal would occupy. In contrast, those systems that do choose to carry distant signals reveal by their behavior that they value the chosen signals more than alternate uses. As a result, a substantial change in the particular signals cable operators choose to carry can be a meaningful indicator of a change in cable operator demand.

Slightly more subscribers were in cable systems that chose to carry distant signals in 2004-05 (82 percent) than in 1998-99 (76 percent). On average, cable operators that carried distant signals chose to carry about the same number of distant signals per subscriber: 1.51 in 1998-99 and 1.46 in 2004-05. The composition by type of signal also remained relatively the same. For example, the average subscriber with distant signals received 0.15 PTV stations in 1998-99 and 0.18 PTV stations in 2004-05. See Chart 1.<sup>5</sup>

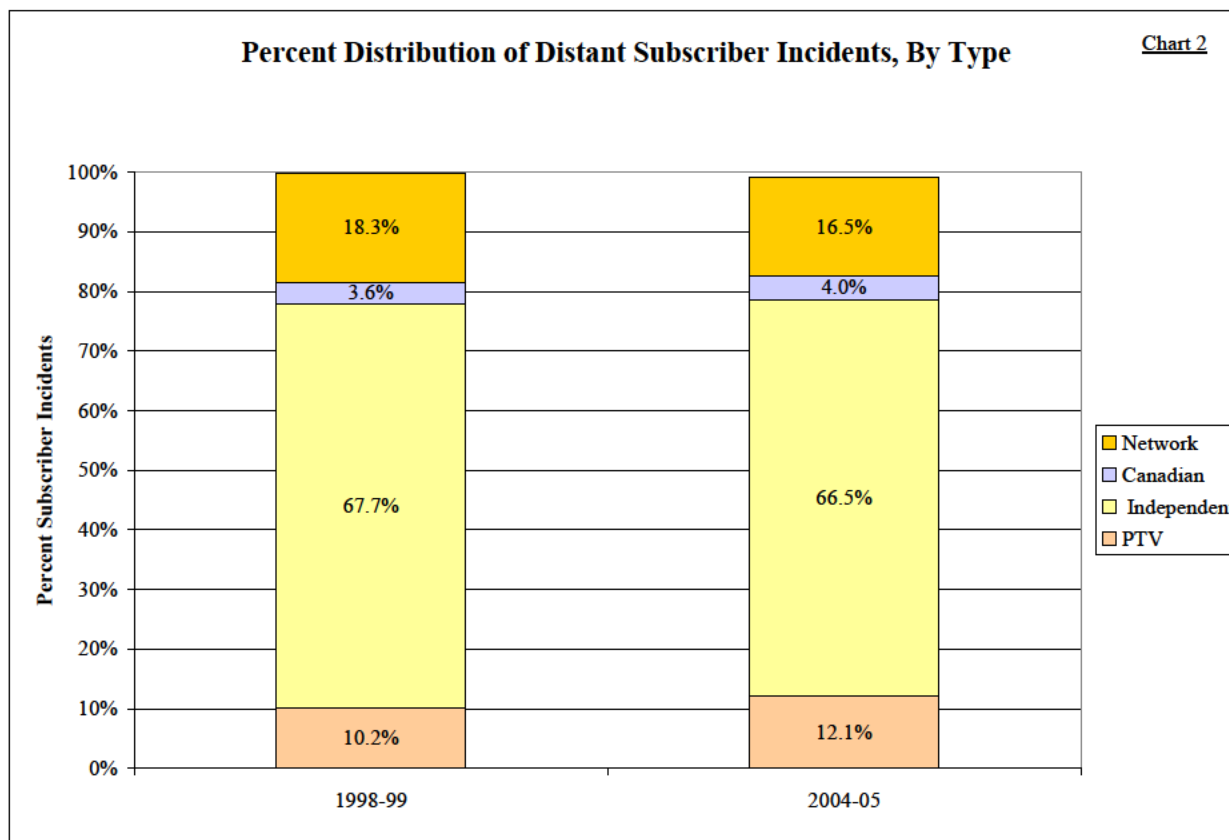
<sup>4</sup> Based on data supplied by Cable Data Corporation (CDC). These and other data in my report represent data supplied by Form 3 systems. Form 3 systems accounted for 91 percent of subscribers in 1998-99 and 94 percent in 2004-05; they paid 96 percent of royalties in 1998-99 and 97 percent in 2004-05. The CDC data used in my analyses are described in the Direct Testimony of Jonda K. Martin, also submitted in this proceeding.

<sup>5</sup> Based on data supplied by CDC. The total includes Low Power and Mexican, which averaged 0.01 signal per subscriber or less.



Another way to see that the composition of the distant signals carried remained approximately the same in 1998-99 and 2004-05 is to look at the percentage distribution of distant subscriber incidents. (One distant subscriber incident is one subscriber receiving one distant signal.) Total distant subscriber incidents increased slightly from 68.0 million in 1998-99 to 70.7 million in 2004-05. The number of distant PTV subscriber incidents increased from 7.0 million in 1998-99 to 8.5 million in 2004-05. PTV accounted for 10 percent of the distant

subscriber incidents in 1998-99 and 12 percent in 2004-05.<sup>6</sup> The percent of distant subscriber incidents for other types of signals was even more stable over the two periods. See Chart 2.<sup>7</sup>



<sup>6</sup> PTV also achieved similarly small increases by other measures. PTV accounted for 0.039 DSEs out of a per-subscriber average of 1.190 DSEs in 1998-99 and 0.044 out of 1.145 in 2004-05. PTV accounted for 3.2 percent of fees generated in 1998-99 and 3.4 in 2004-05. [Data provided by CDC.] Compared to subscriber incidents, however, PTV accounts for a smaller percentage of average DSEs per subscriber and of fees generated due to the arbitrary designation of PTV signals at one-quarter of a DSE. As I explained in an earlier report, fees generated reflect the payment framework of the compulsory license and attribution methods, rather than the value of the programming on the retransmitted stations. See Testimony of Linda McLaughlin, In the Matter of Distribution of the 2000, 2001, 2002, and 2003 Cable Royalty Funds, Docket No. 2008-2 CRB CD 2000-2003, January 30, 2009, PTV 04-05 Ex. 9.

<sup>7</sup> Based on data supplied by CDC. Low Power and Mexican stations accounted for less than 1 percent of subscriber incidents.

### C. Unadjusted Bortz Survey

Each year, Bortz Media & Sports Group, Inc. (Bortz) conducts a survey of a random sample of cable operators.<sup>8</sup> The cable operators are asked how they would allocate a fixed budget among the different programming categories on the distant signals they actually carried in the preceding year. The survey results reflect the collective valuations made by the eligible respondents. Certain potential respondents, however, are deemed ineligible: those that carry distant signals only in the PTV and/or Canadian category. For this reason, Trautman acknowledges that the survey results for PTV and Canadian program categories require adjustment.<sup>9</sup> Nevertheless, the reported survey results can provide useful information about any substantial changes in relative value between 1998-99 and 2004-05 for two reasons. First, the ineligible potential respondents are similar in the two time periods.<sup>10</sup> Second, many of the eligible survey respondents import distant PTV and/or Canadian signals along with independents and network affiliates.<sup>11</sup>

The unadjusted Bortz survey shows no substantial change in cable operators' relative values of the different types of programming. For example, in 1998-99, the surveyed cable operators attributed 2.9 percent of the value of the distant signals they imported to PTV programming in 1998 and 1999; the surveyed group attributed 3.5 percent to imported PTV programming in 2004 and 3.7 percent in 2005.<sup>12</sup> Changes in other categories between 1998-99 and 2004-05 are of similar magnitude. See Chart 3.<sup>13</sup>

<sup>8</sup> Testimony of James M. Trautman, Bortz Media & Sports Group, Inc., Cable Operator Valuation of Distant Signal Non-Network Programming, June 1, 2009 (Trautman, 2009).

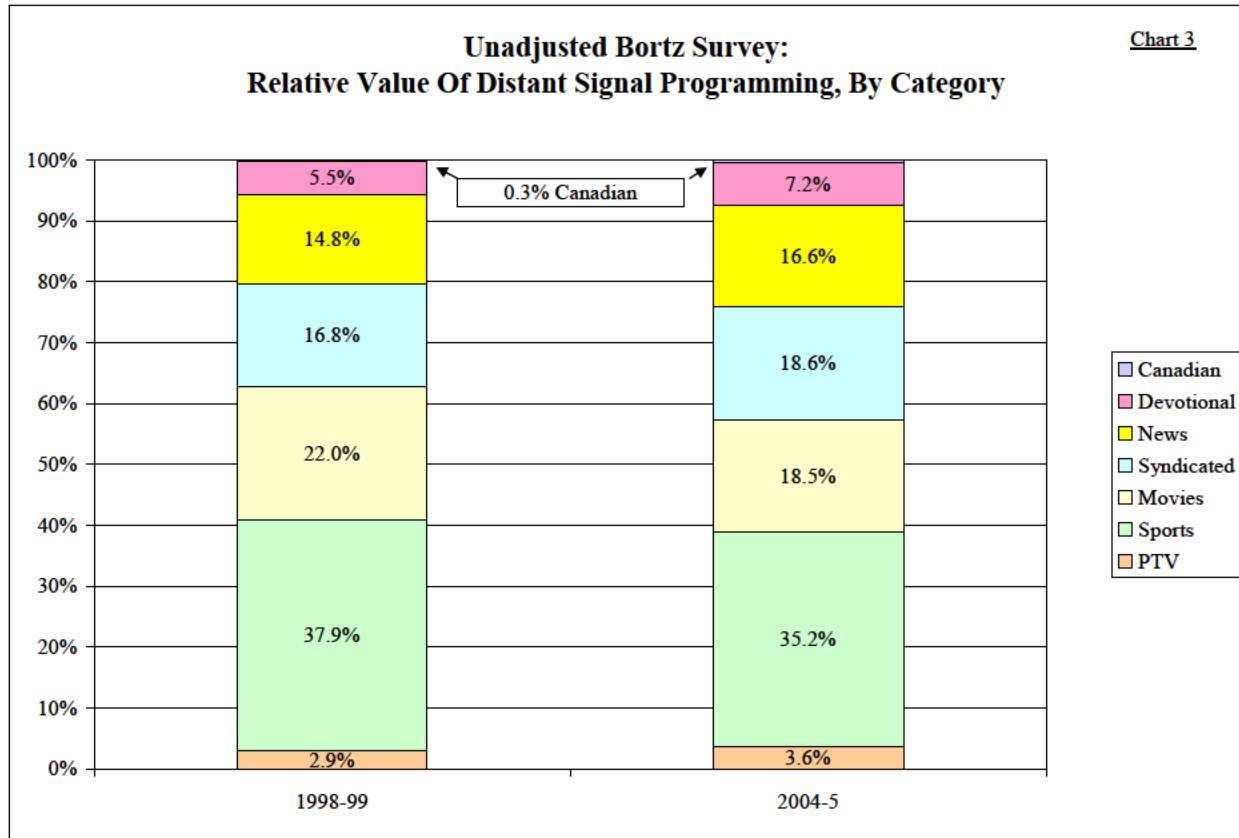
<sup>9</sup> Trautman, 2009, pp. 7-8.

<sup>10</sup> Including the omitted systems that carry only PTV and Canadian distant signals would have increased the size of the eligible sample by 6 to 8 percent in 1998-99 and 4 percent in 2004-05.

<sup>11</sup> For example, in 2004, 59 of the 162 eligible respondents carried distant PTV signals and 11 carried distant Canadian signals (Trautman, 2009, pp. 15-16).

<sup>12</sup> The observed increase is within the range of sampling variation.

<sup>13</sup> Trautman, 2009, p. 6, Table I-2. Detail may not sum due to rounding.



Based on both carriage data and the unadjusted Bortz survey, there was no substantial change in the relative demand of cable operators for imported programming between 1998-99 and 2004-05. The small changes that occurred were generally in favor of PTV programming.

### III. Augmented Bortz Survey Results

Available information allows me to compute the values the 2004 and 2005 Bortz surveys likely would have found had they not excluded from the original samples cable operators that carried only distant PTV and/or Canadian signals. I refer to the larger sample as the augmented Bortz survey.

#### A. Background

The Bortz survey asks cable operators to estimate the relative value of the different programming types broadcast by the particular distant signals they carry. Specifically, the 2004 survey asked:



Now, I would like you to estimate the relative value to your cable system of each type of programming actually broadcast by the stations I mentioned during 2004 [as those your system carried from other cities], other than any national network programming from ABC, CBS and NBC. That is, how much do you think each such type of programming was worth, if anything, on a comparative basis, in terms of attracting and retaining subscribers. We are only interested in [repeat list of distant stations carried].

Assume you had a fixed dollar amount to spend in order to acquire all the programming actually broadcast during 2004 by the stations I listed. What percentage, if any, of the fixed dollar amount would you spend for each type of programming? Please write down your estimates, and make sure they add to 100.<sup>14</sup>

The Bortz survey uses seven program categories, five of which appear on U.S. independent stations and network affiliates—movies, live professional and college sports, syndicated shows, news/public affairs and devotional/religious programming—and two of which are specific to a station type—PTV and Canadian stations.<sup>15</sup>

But for two factors, the Bortz survey results would show how the cable operators themselves would have allocated the compulsory licensing royalties they paid to carry that programming. The first factor is the omission of cable operators selected in the sample but deemed ineligible to respond because they import only PTV or Canadian distant stations. As a result of this omission, the value given for PTV and Canadian programming is a floor.<sup>16</sup> Had these omitted operators been included, they would have been restricted to “dividing the value” among only one programming category, PTV or Canadian, respectively. As a result, it is self-evident what these omitted operators would have replied, if they had been included and had followed the survey instructions: those that carried only PTV would be required to say 100 percent for PTV programming and, similarly, those that carried only Canadian stations would be

<sup>14</sup> Trautman, 2009, Appendix B, 2004 System Operator Programming Questionnaire, 4a. A similar question was asked for 2005.

<sup>15</sup> The programming category specifically includes all programming on these station types. For PTV the category is: “PBS and all other programming broadcast during 2004 by U.S. noncommercial station \_\_\_\_ [the PTV station(s) carried by the cable operator].”

<sup>16</sup> Trautman, 2009, pp. 7-8; Report of the CARP to the Librarian of Congress, In the Matter of the Distribution of 1998 and 1999 Cable Royalty Funds, Docket No. 2001-8 CARP CD 98-99, October 21, 2003, pp. 25-26.

required to say 100 percent for programming on Canadian stations.<sup>17</sup> I added these omitted systems back into the Bortz survey. The results of the augmented Bortz survey provide an estimate of the PTV value, not a floor.

The second factor is the implied inclusion of certain noncompensable programming. In general, two categories of programming contained on some imported signals are not compensable: (1) ABC, CBS and NBC network programming and (2) certain programming, particularly movies, syndicated and devotional programming, not retransmitted from the programming broadcast by the television station WGN but inserted into the satellite-delivered WGN signal.<sup>18</sup> The survey instructs respondents to ignore the value of the noncompensable network programming but not the value of the noncompensable WGN programming. As a result, the values cable operators that import WGN ascribe to movies, syndicated series and devotional programming are likely to include both compensable and noncompensable programming, which would overstate the values of the compensable programming in these categories.

## **B. Calculation of Augmented Bortz Survey Results**

I received information identifying the cable operators picked to be surveyed but excluded because they carried only PTV or Canadian distant signals. I recalculated the survey results, assuming that these systems were eligible. I further assumed that these omitted systems would have a response rate similar to those that were eligible and that they would have followed the

<sup>17</sup> An omitted cable operator with distant PTV and Canadian stations, but no other distant stations, would have been asked to divide the value among the two programming types. For such cable operators, the split in the relative value between PTV and Canadian station programming would not be self-evident. No such cable operators were omitted from potential respondents in 2004 and only two such operators were omitted in 2005.

<sup>18</sup> Statement of Richard V. Ducey, June 1, 2009, also submitted in this proceeding.

survey instructions. A simplified version of the recalculation for 2004 is set out below. It produces an augmented survey result of 6.8 percent for PTV in 2004.<sup>19</sup>

- 162 respondents, 64.5 percent of those eligible, gave PTV a relative value of 3.5 percent.
- Nine systems were drawn in the original sample but deemed ineligible because they carried only PTV distant signals. Had they been eligible, we would expect 64.5 percent of the 9 to respond, or 5.8 respondents, all of which would have assigned PTV stations 100% of the relative value.
- One system was in the original sample but was ineligible because it carried only a Canadian distant station. Had it been eligible, we would expect 64.5 percent of the 1 to respond, or 0.6 respondents, which would have assigned PTV stations 0% of the relative value.
- $[(162 \times 3.5\%) + (5.8 \times 100\%) + (0.6 \times 0\%)] / [162 + 5.8 + 0.6] = 6.8\%$

The actual process is more complicated due to the stratification and weighting process used by the Bortz survey. (See Appendix 2.) Nevertheless, the simplified result is similar to the augmented survey result I obtained from the more complete process: 6.2 percent for PTV.

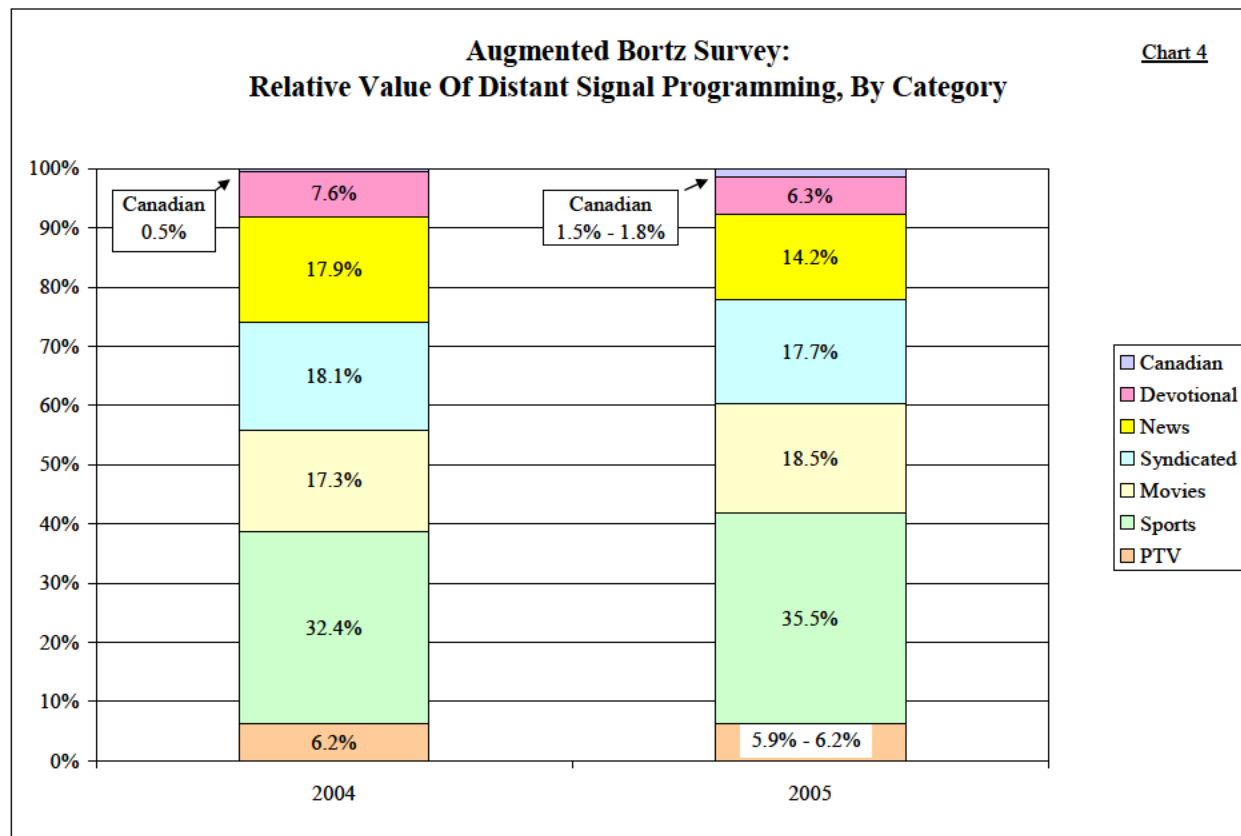
I undertook the same steps for the 2005 survey, with one exception. Among the original sample of cable operators, there were not only those deemed ineligible because they carried only PTV distant signals (seven systems) or only Canadian distant signals (one system), but also two

<sup>19</sup> The relatively small size of the augmented result for PTV, like the size of the original PTV result, reflects the fact that only about 30 percent of Form 3 systems and about 25 percent of Form 3 subscribers receive a distant PTV signal (based on CDC data). The value given to PTV by respondents to the original 2004 survey for systems that carried PTV was 11 percent, a value higher than those given to Canadian and devotional programming, but less than other programming types (Trautman, 2009, p. 16, Table II-2). The augmented survey, if restricted to those that carried distant PTV stations, would give PTV a value of about 19 percent in 2004, a value in the same range as news, syndicated programming and movies, and greater than the values given to devotional and Canadian programming.

It is not surprising that distant PTV programming is highly valued by those that carry it. In 2004-05, virtually all subscribers received a local and/or distant PTV signal. A substantial portion of those with a distant PTV signal had no local PTV signal. In 2004-05, 27 percent of Form 3 subscribers with a distant PTV station had no local PTV station. [Data provided by CDC.] For such subscribers, a distant PTV signal is the only way they can receive PTV programming.

ineligible systems that carried both PTV and Canadian distant signals. Because it is unclear how respondents in the last group would have split their relative values between PTV and Canadian station programming, I used a range of responses: the extremes of 100 percent PTV/0 percent Canadian and 0 percent PTV/100 percent Canadian. My estimate for the augmented Bortz survey in 2005 is a range depending on the assumed answer of the last group: 5.9 to 6.2 percent.

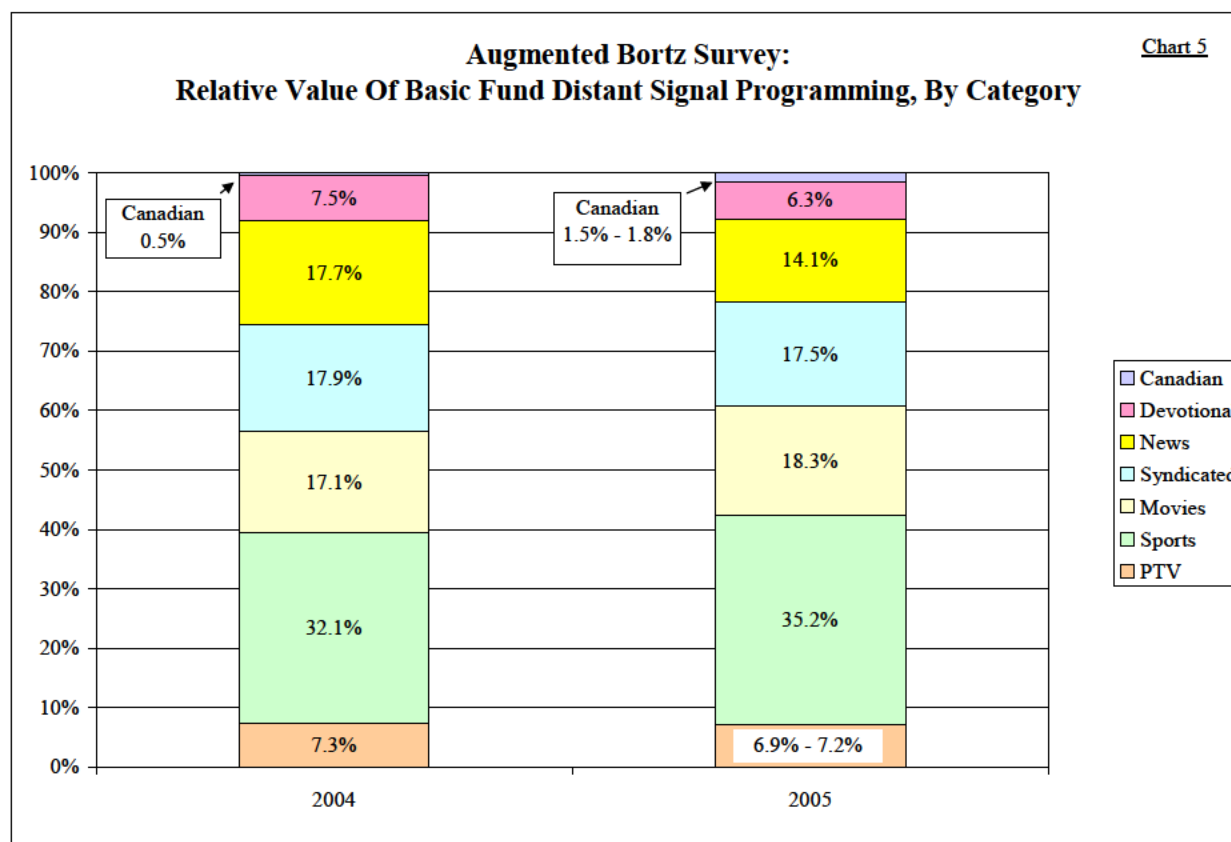
When the ten omitted systems that carried only PTV and/or Canadian distant signals are added to each year's survey, the estimated values for PTV and Canadian programming increase and the estimated values for the five other categories decrease. The augmented results for 2004-05 for each of the seven programming categories are summarized on Chart 4.<sup>20</sup>



Both the unadjusted and augmented Bortz survey results show the percentage value of all royalties —basic, 3.75 and syndex royalties—paid by the surveyed cable systems that the respondents assign to each programming type. Since PTV receives payments from only the

<sup>20</sup> Methodology and sources are described in Appendix 2. Detail may not sum due to rounding.

basic fund, an adjustment to the augmented survey results is needed to produce PTV's share of the basic fund.<sup>21</sup> This adjustment divides the augmented PTV results by the percent of all Form 3 royalties in the basic fund: 85.0 percent in 2004 and 85.9 percent in 2005.<sup>22</sup> The adjusted PTV results equal about 7 percent. See Chart 5.<sup>23</sup>



<sup>21</sup> Report of the CARP to the Librarian of Congress, In the Matter of the Distribution of 1998 and 1999 Cable Royalty Funds, Docket No. 2001-8 CARP CD 98-99, October 21, 2003, p. 26, fn. 10.

<sup>22</sup> Based on data provided by CDC.

<sup>23</sup> Based on Chart 4 and data supplied by CDC. Since only syndicated programming participates in the syndex fund, the other categories are also adjusted for their fund participation. (The nonsyndex adjustment factor, 99.97 percent in 2004 and 2005, produces virtually no change.) All categories other than PTV are adjusted for the increase in PTV's share. Detail may not sum due to rounding.

## **IV. Conclusion**

In summary, I conclude:

- There was no major change in the factors that would affect relative marketplace value in 2004-05. The relative number of subscribers receiving distant PTV and other signals and the Bortz survey results indicate that there was no decline in the demand for imported PTV programming. In fact, there were slight increases in these values.
- The augmented Bortz survey, which includes systems that carried only PTV or Canadian distant signals, would have been expected to find that cable operators attributed to PTV about 6 percent of the fixed dollar amounts they spent on the distant signals they actually imported to attract and retain subscribers in 2004-05.

**Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.**

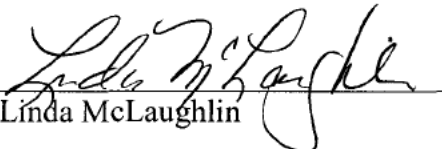
\_\_\_\_\_  
**In the Matter of**

**Distribution of the  
2004 and 2005  
Cable Royalty Funds**  
\_\_\_\_\_

)  
)  
)  
) **Docket No. 2007-3 CRB CD 2004-2005**  
)  
)

**DECLARATION**

I, Linda McLaughlin, declare under penalty of perjury that the testimony of Linda McLaughlin presented in the 2004-2005 Cable Copyright Royalty Distribution Proceeding is true and correct to the best of my knowledge, information and belief.

  
Linda McLaughlin

Executed on: 5/29/2007

**Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.**

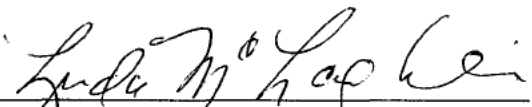
\_\_\_\_\_  
In the Matter of )

Docket No. 2007-3 CRB CD 2004-2005

)  
Distribution of the 2004-2005 )  
Cable Royalty Funds )  
\_\_\_\_\_ )

**DECLARATION**

I, Linda McLaughlin, declare under penalty of perjury that the Testimony of Linda McLaughlin presented in the 2004-2005 Cable Copyright Royalty Distribution Proceeding, as corrected September 30, 2009, is true and correct.

  
\_\_\_\_\_  
Linda McLaughlin

Executed on: September 30, 2009



**LINDA McLAUGHLIN**  
**SPECIAL CONSULTANT**

Ms. McLaughlin specializes in antitrust and trade regulation. She has prepared studies of relevant product and geographic markets, market structure and performance, the impact of mergers and acquisitions, vertical and horizontal arrangements, and pricing and purchasing practices. These studies have focused on various consumer and producer industries, with particular emphasis on media and insurance.

Her work in the media and entertainment industries also includes: analyses of proposed US Federal Communications Commission rules concerning cable and broadcast television; pricing of music copyrights and retransmitted television stations rights; evaluation of motion picture talent contracts; the impact of a new magazine introduction; the reasonableness of cable, home satellite, and recorded music projections; and the value of cable systems, cable networks, and newspaper distributors.

In the area of insurance, she has also studied the effect of state rate regulation and deregulation of large commercial transactions, as well as the causes of the liability insurance crisis and its effect on reinsurers.

In addition, Ms. McLaughlin has performed studies of impact and damages in connection with antitrust, contract, trademark, and other litigation. The firms involved in these studies have included: manufacturers of consumer electronics products, fertilizers, windows, paint, and pharmaceutical products; distributors of chemicals, steel, beverages, and telecommunications services and equipment; tobacco growers; and satellite and internet service providers.

## Education

### University of Pennsylvania

M.A., Economics, 1970

### Marquette University

B.S., *cum laude*, Mathematics, 1968

## Professional Experience

- 1974- **NERA Economic Consulting**  
Special Consultant (since 2009)  
*Specialization:* antitrust and trade regulation, intellectual property, economic damages.  
*Primary industries studied:* media and entertainment, including broadcast, cable and satellite television, broadcast and satellite radio, motion pictures, recorded music, music publishing, advertising, newspapers, magazines and internet; and property-casualty and health insurance.  
*Other industries studies:* telecommunications, photographic supplies, consumer electronics products, fertilizers, paint, windows, window coverings, pharmaceutical products, building products, hardware, chemicals, glass, steel, breakfast cereal, beverages, and tobacco.
- 1970-1974 **Hofstra University**  
Instructor  
Taught introductory economics, intermediate microeconomics, and the application of mathematics to economics.

## Professional Activities

Member, American Economic Association and Committee on the Status of Women in the Economics Profession.

## Testimony, Reports, and Publications

*IDT Telecom, Inc., et al. v. CVT Prepaid Solutions, Inc., et al.* (D.N.J.), a Lanham Act case. Report, April 2009; deposition testimony, May 2009.

*Distribution of the 2000, 2001, 2002, and 2003 Cable Royalty Funds*, Docket No. 2008-2 CRB CD 2000-2003. Report, January 2009.

*In the Matter of the Arbitration between BMI, Petitioner, and Williston Community Broadcasting, et al., Respondent* (American Arbitration Association), a contract case. Affidavit, December 2008.

*In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceedings before the Copyright Royalty Board, Docket No. 2006-3 CRB DPRA.* Report, November 2006; deposition testimony, October 2007; hearing testimony, February 2008.

*In the Matter of the Application of Clear Channel Adshel, Inc. For a Judgment Pursuant to Article 78 of the CPLR v. Franchise and Concession Review Committee of the City of New York, et al.* (Sup. Court N.Y.S., New York County). Affidavit, July 2006.

*Teleglobe Communications Corporation et al. v. BCE, Inc. et al.* (D. Del.), a bankruptcy case. With William E. Taylor, Report, March 2006; rebuttal report, April 2006; deposition testimony, May 2006.

*Clear Channel Investments, Inc., Claimant v. XM Satellite Radio Holdings, Inc., et al., Respondents* (JAMS Arbitration), a breach of contract case. Report, September 2005; deposition testimony, September 2005.

*Proposed Acquisition of United General Title Insurance Company by The First American Corporation* (Arkansas Insurance Department). Report, February 2005.

*Mitchell Camarda, et al. v. Snapple Distributors, Inc., et al.* (S.D.N.Y.), an antitrust case. Report, August 2004; rebuttal report, January 2007; deposition testimony, February 2007; affidavit, March 2007.

*Paul Zuccarini v. Ziff Davis Media Inc., et al.* (Sup. Court N.Y.S., Nassau County), a breach of contract case. Report, May 2004; deposition testimony, July 2004.

*In the Matter of the Merger of Pacific Northwest Title Insurance Company with and into The First American Corporation* (Washington State Office of the Insurance Commissioner and Alaska Department of Insurance). Reports (both states), April 2004; hearing testimony (Washington), April 2004.

*CSC Holdings, Inc., Claimant, and Yankees Entertainment and Sports Network, LLC, Respondent* (American Arbitration Association), a contract case. Report, January 2004; deposition testimony, February 2004; hearing testimony, March 2004.

*United Magazine Company, Inc., et al. v. Murdoch Magazines Distribution, Inc., et al.* (S.D.N.Y.), an antitrust case. Report, December 2003.

*D. Lamar DeLoach, et al. v. Philip Morris Companies, Inc., et al.* (M.D.N.C.), an antitrust case. Report, October 2003; deposition testimony, October 2003.

*Trowbridge, et al. v. Sony Music Entertainment, Inc., et al.* (D. Me.), an antitrust case. Report, July 2003; supplemental report, October 2003; addendum, November 2003.

*Original IFPC Shareholders, Inc. v. AT&T Wireless Services, Inc. et al.* (Cir. Court of DuPage County, Ill.), a trade secret case. Report, March 2003; rebuttal report, May 2003; deposition testimony, June 2003.

“Recording Industry Revenues and Costs.” Hearing testimony before the California Legislature, Joint Hearing of the Senate Committee on Judiciary and the Senate Select Committee on the Entertainment Industry on Record Label Accounting Practices, September 2002; report prepared for the Recording Industry Association of America, November 2002.

*Twentieth Century Fox Film Corp. v. Marvel Enterprises, Inc., Tribune Entertainment Co., Fireworks Communications, Inc. and Fireworks Television (US) Inc.* (S.D.N.Y.), a breach of contract, copyright and Lanham Act case. Report, August 2002; deposition testimony, September 2002.

*In the Matter Between Paxson Communications Corp., Claimant, and National Broadcasting Co., Respondent* (American Arbitration Association), an antitrust case. Report, March 2002; supplemental report, June 2002; hearing testimony, June 2002.

The Commission’s Cable Horizontal and Vertical Ownership Limits and Attribution Rules, FCC MM Docket No. 92-264. With Paul L. Joskow, Report, January 2002.

*We Media Inc. v. Cablevision Systems Corp. et al.* (S.D.N.Y.), a Lanham Act case. Report, December 2001; deposition testimony, February 2002.

*U.S. v. BMI, In the Matter of the Application of Hicks Broadcasting of Indiana, et al., Applicants, for the Determination of Reasonable License Fees* (S.D.N.Y.). Report, November 2001; rebuttal report, January 2002; deposition testimony, March 2002.

*Atlantic Embroidery, Inc. v. Vanguard Industries, Inc.* (E.D. Va.), an antitrust case. Report, August 2001.

*Determination of Rates and Terms for Digital Performances of Sound Recordings*, Docket No. 2000-9 CARP DTRA 1&2. Report, April 2001; hearing testimony, July-August 2001.

*BPW Rhythmic Records L.L.C. v. CDNow, Inc. and N2K Inc.* (S.D.N.Y.), a breach of contract case. Report, August 2000; deposition testimony, August 2000.

*Rajendra Patel v. Hughes Electronics Corporation et al.* (S.D. Md.), a breach of contract case. Report, July 2000.

*Distribution of Satellite Royalty Funds*, Docket No. 97-1 CARP SD 92-95. Report, January 1999.

*Arthur Sarkissian v. The Walt Disney Company, et al.* (Sup. Court, Los Angeles, Cal.), a contract case. Deposition testimony, October 1998.

*Hometron USA, Inc., v. Bell Atlantic Corporation et al.* (Cir. Court of Baltimore City, Md.), a fraud case. Report, February 1998; deposition testimony, February 1998.

*Time Inc. v. Petersen Publishing Co., L.L.C.* (S.D.N.Y.), a Lanham Act case. With Philip A. Beutel, Report, January 1998.

*Integrated Consulting Services, Inc. v. LDDS Communications, Inc.* (S.D. Md.), a breach of contract case. Report, July 1997.

“Background Analysis for New York State Insurance Enterprise Zone.” Report prepared for The Insurance Brokers’ Association of the State of New York, April 1997.

*Satellite Carrier Royalty Rate Adjustment Proceeding*, Docket No. 96-3 CARP SRA. Report, November 1996; hearing testimony, March 1997.

*Frebon International Corporation v. Bell Atlantic Corporation, et al.* (D.D.C.), a breach of contract case. Report, February 1996; deposition testimony, March 1996.

Review of the Commission’s Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates, FCC MM Docket No. 95-92. With Philip A. Beutel and Howard P. Kitt, Report, October 1995, Supplemental Report, January 1996.

*Turner Broadcasting System, Inc., et al., v. Federal Communications Commission, et al.* (D.D.C.), a First Amendment case. Deposition testimony, May 1995; affidavits, May and June 1995.

“Competitive Effect of Elimination of Small Overbuilds Between Time Warner and Cablevision Industries.” With Paul Joskow, Report prepared for submission to the Federal Trade Commission, April 1995.

*Thompson Everett, Inc. v. National Cable Advertising, Inc., et al.* (E.D. Va.), an antitrust case. With Richard Schmalensee, report, March 1994; deposition testimony, April 1994.

*Selcke v. Touche Ross & Co., et al.* (Cir. Court of Cook County, Ill.), a breach of contract case. Deposition testimony, March 1994 and May 1995.

Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, FCC MM Docket No. 92-266. With Lewis J. Perl and Jonathan Falk, reports on econometric issues, June and July 1993.

*Hachette Distribution, Inc. et al. v. Hudson County News Company, Inc. et al.* (E.D.N.Y.), an antitrust case. Deposition testimony, March 1993.

*Abbott Laboratories v. Mead Johnson & Company* (S.D. Ind.), a Lanham Act case. Report, January 1993.

“Federal Charter Plan Background Analysis.” Report prepared for the Insurance Solvency Coalition, December 1991.

“McCarran-Ferguson Act Reform: More Competition or More Regulation?” With Paul Joskow, *Journal of Risk and Uncertainty*, December 1991.

*Personal Preference Video, Inc. et al. v. Home Box Office, Inc.* (N.D. Tex.), a breach of contract case. Trial testimony, October 1991.

Cable Television Franchise Renewal Proposals of Manhattan Cable TV and Paragon Cable Manhattan. Opinions on the reasonableness of certain assumptions, January 1990.

*Associated Imports, Inc. v. International Longshoremen's Association et al.* (S.D.N.Y.), a breach of contract case. Deposition testimony, October 1988, September 1990; trial testimony, October 1990.

*James M. King and Associates, Inc. v. G. D. Van Wagenen Co., et al.* (D. Minn.), an antitrust case. Affidavit, January 1988; deposition testimony, February 1988.

*Apache Corp. v. McKeen et al.* (E.D.N.Y.), a RICO case. Deposition testimony, April 1987.

*James F. Chumbley, et al. v. Rockland Industries, Inc.* (D. Md.), a breach of contract case. Deposition testimony, December 1985; trial testimony, January-February 1986.

*Acorn Building Components, Inc. v. Norton Co.; Jeld-Wen, Inc. v. Norton Co.; and Weather Shield Mfg, Inc. v. Norton Co.* (E.D. Mich., Southern Div.), product liability cases. Deposition testimony, October 1985.

*Action Publications v. Panax Corp. et al.* (W.D. Mich.), an antitrust case. Deposition testimony, June 1984; trial testimony, December 1984.

*East Coast Chemicals v. Exxon* (Sup. Court, N.J.), a product liability case. Report, June 1983; deposition testimony, June 1983.

*Mississippi Chemical Corp. v. Chemical Construction Corp. et al.* (S.D. Miss.), a breach of contract case. Deposition testimony, June 1982.

*Comet Industries, Inc. v. ESB Inc., et al.* (W.D. Mo.), a breach of contract case. Deposition testimony, September 1981.

*Paschall and Intervenor v. The Kansas City Star Co.* (W.D. Mo.), an antitrust case. Deposition testimony, November 1980.

May 2009

## Appendix 2

### Augmented Bortz Survey Sources and Methods

The Bortz survey draws a stratified random sample of cable operators, with the stratification into four groups (or strata) based on the size of the system's cable royalties. It then eliminates ineligible systems (for example, those carrying no distant signals and those carrying only PTV or Canadian distant signals)<sup>1</sup> and attempts to interview the remaining, eligible systems. Interviews were completed with 64.5 percent of the eligible sampled systems in 2004 and with 68.1 percent of those in 2005.<sup>2</sup> In order to arrive at survey estimates from the interview responses concerning valuation by program category for the total population (including those interviewed and not interviewed), Bortz used a ratio estimation methodology that weights responses based on (1) the total royalty of each respondent's system, (2) the total royalties of all respondents' systems in that same stratum, and (3) the total royalties of all (sampled and nonsampled) systems in that stratum.<sup>3</sup>

I obtained the augmented survey results based on the following data: for each of the ten omitted systems that carried PTV and/or Canadian distant signals in each year, 2004 and 2005, I received information, including the royalty, the stratum and the type of signals carried. I also received, from CDC, summaries of the original Bortz survey results for each of the four strata for 2004 and 2005, including the number of respondents, their royalties and their total value for each of the program categories.<sup>4</sup> In addition, Trautman, 2009 (p. 46, Table A-1) supplied the eligible sample and the distribution of total royalties for the four strata.

I obtained the augmented survey results by undertaking the following steps analogous to the original Bortz survey:

First, I determined which of the ten systems drawn in the original Bortz survey in 2004 and 2005 but ineligible due to carrying only PTV and/or Canadian distant signals would be likely

---

<sup>1</sup> Trautman, 2009, p. 46, Table A-1.

<sup>2</sup> Trautman, 2009, pp. 47-48.

<sup>3</sup> Trautman, 2009, pp. 49-50.

<sup>4</sup> These summaries gave a single figure for each programming category in a particular strata; individual responses were not provided.

respondents. The ten systems covered all four strata. To determine the likelihood of each responding, I used the response rates specific to each stratum as the probability of an omitted system in an individual stratum being included in the overall results.<sup>5</sup>

Second, I determined the responses of each system to the valuation question. For the excluded systems importing only PTV signals or only Canadian signals (all ten of the omitted systems in 2004, and eight of the ten in 2005), each was assumed to have 100 percent of its fixed dollar amounts allocated to PTV or Canadian, in accordance with the respective PTV or Canadian distant signal the system carried and 0 percent for all other program categories. In 2005, two systems carried both Canadian and PTV. I have assumed different distribution amounts for these systems to represent the extremes (i.e. 0 percent Canadian and 100 percent PTV, or 100 percent Canadian and 0 percent PTV). These extremes represent the ceiling and floor of possible outcomes for these systems.

Third, I calculated the likely augmented Bortz survey results considering the following factors: (1) the probability of responding for each omitted system in each stratum, (2) the valuation response for program category x for the omitted system in each stratum, (3) the valuation response for program category x for the original respondents (as a group) in each stratum, (4) the royalty weight of each omitted system in each stratum, (5) the royalty weights for the original respondents (as a group) in each stratum, (6) the royalty weights for total royalties of all (sampled and nonsampled) systems in that stratum. The calculation is made according to the formula for the total value of program category x in the Trautman report (Trautman, 2009, pp. 49-50) with the omitted systems given both a probability weight and a royalty weight.

---

<sup>5</sup> I considered running a simulation, that is, a series of independent, random trials such that the share of trials with the system included would match the overall probability for its stratum. Over a large number of trials, this method would produce a result similar to the estimation method used and would not add precision.



# Certificate of Service

I hereby certify that on Monday, February 12, 2018 I provided a true and correct copy of the Written Testimony of Linda McLaughlin, 2004-2005 Cable Distribution Proceeding, June 1, 2009, Corrected Sept. 30, 2009 to the following:

Joint Sports Claimants, represented by Iain McPhie served via Electronic Service at iain.mcphie@squirepb.com

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis served via Electronic Service at smosenkis@ascap.com

Canadian Claimants Group, represented by Lawrence K Satterfield served via Electronic Service at lksatterfield@satterfield-pllc.com

Devotional Claimants, represented by Benjamin S Sternberg served via Electronic Service at ben@lutzker.com

Multigroup Claimants, represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Spanish Language Producers, represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

SESAC, Inc., represented by Christos P Badavas served via Electronic Service at cbadavas@sesac.com

National Association of Broadcasters (NAB), represented by David J Ervin served via Electronic Service at dervin@crowell.com

Broadcast Music, Inc. (BMI), represented by Brian A Coleman served via Electronic Service at Brian.Coleman@dbr.com

National Public Radio, Inc. (NPR), represented by Gregory A Lewis served via Electronic Service at glewis@npr.org

MPAA-represented Program Suppliers, represented by Gregory O Olaniran served via Electronic Service at goo@msk.com

Signed: /s/ Dustin Cho